

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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| HESHAM ISMAIL, | : | |
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| Plaintiff | : | CIVIL ACTION NO. 3:19-1305 |
| | : | |
| v. | : | (JUDGE MANNION) |
| | : | |
| MCDERMOTT INTERNATIONAL, | : | |
| INC., f/n/a CB&I, et al., | : | |
| | : | |
| Defendants | : | |
| | : | |

ORDER

Pending before the court is the report of Magistrate Judge Susan E. Schwab which recommends that defendant McDermott's partial motion to dismiss and defendant Neff's and defendant Honeywell's motions to dismiss the plaintiff's amended complaint be granted. (Doc. 76). Specifically, Judge Schwab recommends that (1) plaintiff's claims under 18 U.S.C. §1001 be dismissed as to all defendants with prejudice; (2) plaintiff's §1981 claims against defendant McDermott be dismissed with prejudice; (3) plaintiff's claims against defendant Neff be dismissed with prejudice and that defendant Neff be dismissed as a defendant from this action; (4) plaintiff's Title VII claims against the Honeywell defendants be dismissed with prejudice and plaintiff's §1981 claims against the Honeywell defendants be dismissed with leave to amend; and (5) plaintiff be granted leave to file a

second amended complaint as to his §1981 claims against the Honeywell defendants and that plaintiff include his Title VII claims against defendant McDermott in the second amended complaint. No objections have been filed to Judge Schwab's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Upon review, the court finds no clear error of record with respect to Judge Schwab's recommendations. Moreover, the court agrees with the sound reasoning which led Judge Schwab to her conclusions.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Schwab (**Doc. 76**) is **ADOPTED IN ITS ENTIRETY** as the opinion of the court.
- (2) The plaintiff's claims under 18 U.S.C. §1001 are **DISMISSED** as to all defendants with prejudice.
- (3) The plaintiff's §1981 claims against defendant McDermott are **DISMISSED** with prejudice.
- (4) The plaintiff's claims against defendant Neff are **DISMISSED** with prejudice and defendant Neff is **DISMISSED AS A DEFENDANT** from this action.
- (5) The plaintiff's Title VII claims against the Honeywell defendants are **DISMISSED** with prejudice.
- (6) The plaintiff's §1981 claims against the Honeywell defendants are **DISMISSED WITH LEAVE TO AMEND**.
- (7) The plaintiff shall file a second amended complaint **on or before April 30, 2021** as to his §1981 claims against the Honeywell defendants and as to his Title VII claims against defendant McDermott.

(8) The instant action is **REMANDED** to Judge Schwab for all further pre-trial proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Court Judge

DATE: April 16, 2021

19-1305-02